Supreme Court, U.S.
FILED

(1) 95-785 OCT 2 - 1995

No. OFFICE OF THE CLERK

In The

Surpreme Court of the United States

October Term, 1995

WALTER BARITSKY Petitioner,

v.

MELODY A. (BARITSKY) SIEGLER Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE WISCONSIN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI.

WALTER BARITSKY, Pro Se
527 Jefferson St
Mauston WI 53948
No Phone

1(a) QUESTIONS PRESENTED

I. WAS BASIC CONSTITUTIONAL ARTICLE V OR 14TH AMENDMENT DUE PROCESS OF LAW DENIED BY UNQUALIFIED, DE FACTO OFFICERS, JUDGES, REPORTERS AND JUSTICES INVOLVED IN FRAUD AND COVER-UP?

II. WAS OBSOLETE STATUTES FRAUDULENTLY USED IN THE PROSECUTION OF ACTION AND IN THE JUDGMENT BY UNQUALIFIED DE FACTO JUDGE?

III. WAS THERE ALTERED-DOCTORED FRAUDULANT TRIAL TRANSCRIPTS USED TO DECIEVE REVIEWING COURTS?

IV. WAS THERE SUBORNATION OF PERJURY, PERJURY AND CONSPRIACY TO OBSTRUCT JUSTICE TO PREVENT THE FRAUD TRANSCRIPTS FROM BEING CORRECTED?

V. WAS THERE JUDICIAL & COUNSEL MISCONDUCT?

VI. WAS EVIDENCE AND INFORMATION SUPPRESSED FROM TRIAL COURT?

VII. WAS JUSTICE MISCARRIED?

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PETITION FOR A WRIT OF CERTIORARI (Rule 14) of a Wisconsin Supreme State Court of last resort July 18,1995 denial to review a denial of 14th Amendment due process & fraud divorce case. Appeal Case No. 94-2403, Trial Court Case No.79-CV-214 Juneau County, Mauston, Wisconsin, in re the marriage of Melody Baritsky and Walter Baritsky.

Petitioner is on disability Social Security pension and cannot afford to hire a Bar lawyer to assist with this petition.

REVIEW AS AFFECTED BY RECORD, II Wis. Pleadings & Practice Ch. 54.
@54.21. Occurrences at trial; misconduct of court or counsel. Where it does appear from the record that the real controversy has not been fully tried or that justice has for any reason miscarried, the appellate court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record, and may remit the case to the trial court for a new trial. In re Marriage of Murray v. Murray, 128 Wis.2d 458, 383 N.W.2d 904 (Ct App).

(b) Melody A.(Baritsky)Siegler is the other party involved to this proceedings to the court.

(d) July 18, 1995 unsigned order from the Wisconsin Supreme Court.

(e) JURISDICTION

The decision of the Wisconsin surpreme court was entered on July 18, 1995 (60 day extention granted by Court clerk). The jurisdiction of this court is invoked under 28 U.S.C. 1257.

(i) July 18, 1995;

(iv) Constitutional Article V or the 14th Amendment due process clause.

(f) ARTICLE V and 14th Amendment of the United States Constitution - No person shall be deprived of life, liberty, or property, without due process of law.

(g) Statement of case. This case was not prosecuted according to state statutes, due process was not afforded, and fraud was involved.

(i) Issue of fraud was raised in the circuit court, the appellate court and supreme court. The de facto officer issue was raised in the circuit and appellate and supreme courts as newly discovered evidence. The courts turned down and ignored the issues on reappeal.

(h) Unqualified, de facto judicial officials in vacant offices committing fraud and violating the law are reasons relied on for allowance of the writ.

(j) When a State Court has decided an important question of federal law which has not been, but should be settled by the Supreme Court.

Case presents important public issues worthy of the court's attention, that warrent its attention.

POINT 1

CASE PROSECUTED UNDER NON-EXISTING OBSOLETE STATUTES BY 'DE FACTO OFFICERS'.

No lawful or valid judgment or order can be issued in the state of Wisconsin, by 'de facto officers' who failed duty to qualify for office by not filing bonds, required by law, Wisconsin Statute 19.01(4)(5).

19.01(4) Where filed. Official oath; and bonds shall be filed; (a) In the office of the secretary of state: of the justices, reporter and clerk of the supreme court, of the judges of the court of appeals; of the

PUBLISHER'S NOTE:

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING:

3

judges and reporters of the circuit courts:

(5) Time of filing. Every public official required to file an official oath or an official bond shall file the same before entering upon the duties of his office; and when both are required, both shall be filed at the same time.

17.03 Vacancies, how caused. Except as otherwise provided, a public office is vacant when: (7) A person elected or re-elected or reapointed to any office neglects or refuses to take and file the official oath or to execute or renew the official bond if required, or to file the oath or bond as prescribed by law.

Certification from office of the Secretary of State by Douglas La Follette, Wisconsin Secretary of State:

"UNITED STATES OF AMERICA
STATE OF WISCONSIN
-OFFICE OF THE SECRETARY OF STATE-

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS

I, DOUGLAS LA FOLLETTE, Secretary of State of Wisconsin, do hereby certify that upon examination of the files and records in my office, Bonds for Justices of the Supreme Court, Clerks of the Supreme Court, Judges of the Court of Appeals, Judges of the Circuit Court and Court Reporters are not extant therein, pursuant to subsections 19.01(4) and (7) of the Wisconsin Statutes.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, in the City of Madison, this 19th day of December, 1990

_____,
DOUGLAS LA FOLLETTE
Secretary of State"

Newly discovered evidence was the de facto officers issue. Wisconsin Justices, Clerk and Reporter of the Supreme Court, Appeal Court Judges, Circuit Court Judges and court Reporters all violated the law by failing duty to obey statute 19.01(4)(5), by failing duty to file bonds.

All of their Offices are vacant under Statute 17.03(7)(8), Vacancy in office; is caused by the failure to file a Bond. All are committing a fraud, impersonating de jure officers in vacant offices. Unqualified, de facto officers usurpers are subject to 'direct attack' under the "De facto Officer Doctrine" (Words and Phrases), Andrade v. Lauer, C.A. 729 F.2d 1475, 1497, 234 U.S.App.D.C. 384.

DE FACTO OFFICER; In general

"De facto officer" is one who is surrounded with insignia of office and seems to act with authority; his/her title is not good in law, but he is in fact in unobstructed position of office and discharging its duties in full view of public, in such manner and under such circumstances as not to present appearence of being intruder or usurper. State v. Smejkal S.D., 395 N.W.2d 588, 591.

A "de facto officer" is one who, while in actural possession of the office, is not there in a manner prescribed by law. Trost v. Tynatishon, 299 N.E.2d 14,18, 12 Ill.App. 3d 406.

Where individual holds office under color of known and valid appointment or election, but has failed to conform to some precedent requirement or condition, as to take an oath or give a bond, individual may be a "de facto officer" Town of Stratford v. Council 15, Local 407, AFSCME,490 A.2d 1021, 1023, 3 Conn.App. 590.

DE FACTO OFFICIAL;

"De facto official" is one who by some color of right is in possession of office and for time being performs its duties with public acquiescence, though having no right in fact. Appleby v. Belden Corp.,738 S.W.2d 807, 809, 22 Ark.App. 243.

DE FACTO OFFICER DOCTRINE;

"De facto officer doctrine" distinguishes between collateral attacks, in which plaintiffs attack government action on ground that the officals who took action were improperly in office, and direct attacks, in which plain-tiffs attack the qualifications of the officer, rather than the actions taken by the officer; doctrine holds that collateral attacks pose too great a threat that the attacked officials' past actions would be subject to wholesale invalidation, which would interfere with government's ability to take effective action; only direct attacks are permissible. Andrade v. Lauer, C.A.,729 F.2d 1475, 1497, 234 U.S. App.D,C, 384.

POINT 2

CASE PROSECUTED WITH NON-EXISTING OBSOLETE STATUTES BY 'DE FACTO OFFICERS'.

Judgment contains OBSOLETE NON-EXISTING STATUTES and false fact.

Unqualified, de facto trial judge James Karch issued a fraud judgment using obsolete statutes,247.263, 247.125, 247.083(1), 245.03(2) & 295.02. Statutes not listed since 1979 Statute Books.(See, evidence, pages 3707, 3708 of 1979-80 Wis. Statutes). Court Commissioners Wm. Brady and Jonathon Lindberg issued fraud restraining orders using

obsolete statutes from Chapter 265. Chapter 265 statutes are not listed in the 1979-80 Statute books.

CHAIN OF PREJUDICIAL ERRORS and FRAUD basis for relief from judgment, new trial.

No Notice of Retainer and Appearance, by any of seven attorneys with no standing before the court.

Ineffective counsel who refused to defend or raise counterclaim refused to raise defenses and to submit evidence, refused to address the paternity issue, refused to prosue counterclaim, proceeded with 'conflict of interest', who sold-out client prior to trial in judges chambers. No tape-recorder was allowed.

Improperly switched, brought-off, de facto judge James Karch, who only had only 3 hours in Juneau County court and had to go back to Sauk County for a afternoon court trial. He lied in the judgment. Both parties did not testify that the marriage was irretrivably broken.

Court Reporter altered-doctered falsified trial transcripts which were refused to be corrected by the de facto trial judge, James Karch, and then used to deceive the de facto Appeal Judges.

De facto trial judge, James Karch, denied stay pending appeal, and continued to proceeded against Petitioner with two contempt charges without jurisdiction while case was on appeal, forcing removal of Lis Pendens.

The Wisconsin supreme court's July 18, 1995 order wrongly states section 808.10 Stats.. Sec. 806.07 Relief from judgment or order is the correct section petitioner

filed under and not considered by the court. 806.7(b) Newly discovered evidence which entitles a party to a new trial under 805. 15(3). (c) Fraud, misrepresentation, or other misconduct of an adverse party. (h) Any other reasons justifying relief from the operation of the judgment.

There is no qualified state judicial officers in the State of Wisconsin. All the judicial offices are vacant according to Wis.Stats.17.03(7) and 19.01(4)(5).

A JUDGMENT PROCURED BY FRAUD EITHER ACTUAL OR CONSTRUCTIVE, MAY BE SET ASIDE. See Estate of O'Neill (1895), 90 Wis. 480, 63 N.W. 1042; Creamer v. Ingalls (1894), 89 Wis. 112, 61 N.W. 82. See generally: Estate of Poulsen (1972), 54 Wis.2d 139, 194 N.W.2d 593; Estate of Hatzl, (1964), 24 Wis.2d 64,67,68, 127 N.W.2d 782, 129 N.W.2d 249.

CONSTRUCTIVE [LEGAL] FRAUD comprises all acts, omissions, and concealments involving breach equitable or legal duty, trust or confindence and resulting in damage to another. 38 Cal.Reptr.148, 157; i.e., no scienter is required, Thus, the party who makes the misrepresentation need not know that it is false. See 417 S.W.2d 20, 27.

CONCLUSION

For the foregoing reasons justifing this Court's attention and certiorari should be granted.

Respectfully submitted

Walter Baritsky,

Walter Baritsky
527 Jefferson St.
Mauston, Wisconsin 53948

APPENDIX

Wis. Supreme Court decision/order, of July 18, 1995 denying Petition for review.

Decision/Judgment, Finding of Facts and Conclusion of Law of Jan. 26, 1981.

Office of the Clerk
SUPREME COURT
231 E. State Capital
Madison, Wisconsin 53701-1688

To: July 18, 1995

Hon. Duane H. Polivka
Adams County Court
402 Main St.
Friendship, WI.

Walter Baritsky
527 Jefferson St
Mauston, WI

Melody Ziegler
P.O.Box 10
Necedah, WI

You are hereby notified that the Court has entered the following order:

No. 94-2403 Marriage of: Baritsky
L.C.#79-CV-214

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalff of defendant-appellant-petitioner, Walter Baritsky, and considered by the court,

IT IS ORDERED that the petition for review is denied, without costs.

_____,
Marilyn L. Graves
Clerk of the Supreme Court

STATE OF WISCONSIN CIRCUIT COURT
JUNEAU COUNTY

In re the marriage of: Case No. 79-CV-214
Melody Baritsky, FINDING OF FACTS,
Petitioner, CONCLUSIONS OF LAW,
v. and JUDGMENT
Walter Baritsky,
Respondant, Filed Jan. 26, 1981

The above-entitled divorce action having come on for trial before the court, on October 3, 1980, at which time it was adjoured to December 8, 1980 for compliance with counseling, the Honorable James W. Karch, presiding, and the petitioner appearing in person and by Daniel M. Berkos, attorney, and the respondant appearing in person and by Philip G. Arneson, attorney;

Also appearing the Hon. Jonathan Lindberg, Family Court Commissioner in and for Juneau County, Wisconsin.

Also appearing Michael J. McAlpine, guardian ad litem for the minor children of the parties;

And it appearing that the proper proof of service on the respondant and family court commissioner being on file, and that 120 days have passed since service of the summons and petition upon the respondant; and the order for appearance of litigants having been served upon the non-moving party pursuant to section 247.125, Stats.;

And pursuant to sec. 247.083(1) Stats., the Family Court Commissioner has certified to this court that the parties have been informed of counseling and referral services available and the moving party has met counseling requirement;

And having heard the testimony of the parties and arguments of counsel, the Court makes and files the following as its Finding of Fact and Conclusion of Law:

1. Petitioner.

The petitioner is, and shall hereafter be referred to as "Melody Baritsky", and she was born on June 18, 1947, presently resides at 607 Weston Street, Necedah Wisconsin; has as an occupation: secretary; has a social security number: 361-36-8735.

2. Respondant.

The respondant is, and shall hereafter be referred to as "Walter Baritsky", and he was born on April 23, 1928, he presently resides at Star, Route, Necedah Wisconsin, has as an occupation: unemployed; has as a social security number 340-20-5433.

3. Marriage.

The parties were married on December 11, 1965, and ever since have been and are now husband and wife.

4. Residence.

The parties have been bona fide residents of the State of Wisconsin for more than six (6) months next preceding this action, and bona fide residents of Juneau County, Wisconsin for more than thirty (30) days next preceding the commencement of this action.

5. Children of marriage.

Five (5) children have been born of this marriage or adopted by the parties, to-wit: Loretta Baritsky, born Nov. 13, 1967; Marianne Baritsky, born Jan.8, 1969, Janette Baritsky, born Oct. 2, 1971; Carrie Baritsky, born July 9, 1973; and Rosalie Baritsky, born July 1, 1975.

6. Pregnant.

The wife is not pregnant at this time.

7. Custody.

Melody Baritsky is a fit and proper person to have the care, custody and control of the minor children of the parties.

8. No prior divorce action.

No other action for divorce, legal seperation or annulment has ever been commenced or is now pending between parties before this or any other court or judge either in Wisconsin or elsewhere.

9. Irretrievable breakdown.

The marriage is irretrievably broken as evidenced by the fact that there is no reasonable prospect for reconciliation to-wit: both parties have stated under oath that the marriage is irretrievably broken.

10. Nonmilitary.

Neither of the parties to the action is now, nor at the commencement of this action was, a member of the armed forces of the United States as that term is used in the Soldiers' and Sailors' Relief Act of 1940, and thereafter amended.

11. Financial disclosure statement.

Melody Baritsky has filed forms disclosing the parties assets and liabilities, and these forms have been updated to date of hearing and entered into evidence.

12. No stipulation.

The parties did not enter into a stipulation as to division of property, maintenance payments and child support. The following provisions were determined by the Court at the final hearing:

A. Child custody to one parent.

Melody Baritsky shall have the care, custody and control of the minor children of the parties, to-wit: Loretta Baritsky, Marianne Baritsky, Janette Baritsky, Carrie Baritsky, and Rosalie Baritsky.

B. Visitation.

Walter Baritsky shall have a right to visitation co-wit: visitation shall take place on Wednesdays of each week as follows: (1) on alternating visitation days, visitation shall take place from 4:00 p.m. to 6:00 p.m. in the petitioner's home with a representative from the Juneau County Department of Social Services present. During these visits petitioner shall not interfere with respondant and shall not be in the immediate area where the visitation takes place. (2) On the other visitation days, the represenative from the Juneau County Department of Social Services shall not be present, but visitation shall be in petitioner's home from 6:00 p.m. to 8:00 p.m. and Melody Baritsky shall be present.

These conditions shall continue for a period of two (2) months, at which time the Juneau County Department of Social Services shall provide the Court, and respective counsels, with an evaluation of the situation and a recommendation as to whether visitation outside of petitioner's home should be permitted. If said report is favorable, visitation outside of home shall be allowed, but shall not include overnite visitation with Walter Baritsky.

If the report submitted to the Court by the Juneau County Department of Social Services does recommend off premises visitation, it shall be the burden of Melody Baritsky to prove why such visitation should not be allowed.

C. Support.

Walter Baritsky shall pay the sum of $15.00 per week per child for support of the minor children. Payments shall be made to the Clerk of Courts of Juneau County on Mondays of each week.

D. Tax dependants.

Melody Baritsky may take the minor children as dependants on her income tax returns.

E. No maintenance payments.

No maintenance payments are awarded to either party.

F. Property division.

As a complete and final property division in lieu of maintenance payments to either party, each party shall have free and clear of any liens or claims on part of the other party to this action the following:

Melody Baritsky

Her personal effects and clothing, and she shall also be awarded 120 acres, specifially: NW1/4 NW1/4, SW1/4 NW1/4, W1/2 W1/2 SE1/4, Section 24, Township 18 North, Range 2 East, with right of ingress and egress to each parcel. Walter Baritsky is awarded the remainder of the property including the residence contained thereon. Walter Baritsky further has the right to remove the brush which may reate a fire hazard from a portion of the NW1/4 NW1/4, but may not remove any trees from said property. Walter Baritsky will have the right of entry from said property for the sole purpose of maintaining the drainage ditches currently located thereon. Walter Baritsky may not intentionally do any acts to the land awarded to Melody Baritsky which would decrease its value.

As part of the transfer to Melody Baritsky, Walter Baritsky have the right of first refusal on land awarded to Melody Baritsky if she choose to sell all or portion of it. Said right shall include the opportunity to match the terms and conditions of any offer recieved by Melody Baritsky for the sale of said land.

Walter Baritsky's right shall be exercised , in writing, within thirty (30) days of actural written notice of offer to purchase in the possession of Melody Baritsky

Each party shall be responsible for any taxes due upon land awarded to them.

Walter Baritsky.

His personal effects and clothing, and the real estate as stated above.

The parties also agree to give to the other any business records or personal records necessary for the filing of income tax returns.

G. Attorney's fees.

Walter Baritsky shall pay toward the attorney's fees of Melody Baritsky the sum of $200.00. This amount is to be paid directly to Daniel M. Berkos of Thompson Law Office, who may enforce this order in his name.

H. Guardian ad litem's fees.

Walter Baritsky shall pay the guardian ad litem fees of Michael J. McAlpine, and these fees are to be paid directly to said guardian ad litem.

Approved on January 16, 1981 ,

_____,

Hon. Jonathan Lindberg
Family Court Commissioner
Juneau County, Wisconsin

JUDGMENT

The above entitled divorce action having come on trial on December 8, 1980, before the Honorable James W. Karch, and the court having filed its Finding of Fact and Conclusions of Law:

Now on motion of Daniel M. Berkos, attorney for petitioner;

IT IS ADJUDGED THAT:

1. The bonds of matrimony heretofore existing between petitioner, Melody Baritsky, and the respondant, Walter Baritsky, are hereby wholly dissolved.

2. The parties did not enter into a stipulation as to division of property, maintenance payments and child support. The following provisions were determined by the Court at the final hearing:

A. Child custody to one parent.

Melody Baritsky shall have the care, custody and control of the minor children of the parties, to-wit: Loretta Baritsky, born Nov. 13,1967; Marianne Baritsky, born Jan.8, 1969, Janette Baritsky, born Oct. 2, 1971; Carrie Baritsky, born July 9, 1973; and Rosalie Baritsky, born July 1, 1975.

B. Visitation.

Walter Baritsky shall have a right to visitation to-wit: visitation shall take place on Wednesdays of each week as follows: (1) on alternating visitation days, visitation shall take place from 4:00 p.m. to 6:00 p.m. in the petitioner's home with a representative from the Juneau County Department of Social Services present. During these visits petitioner shall not interfere with respondant and shall not be in the immediate area where the visitation takes place. (2) On the other visitation days, the represenative from the Juneau County Department of Social Services shall not be present, but visitation shall be in petitioner's home from 6:00 p.m. to 8:00 p.m. and Melody Baritsky shall be present.

These conditions shall continue for a period of two (2) months, at which time the Juneau County Department of Social Services shall provide the Court, and respective counsels, with an evaluation of

the situation and a recommendation as to whether visitation outside of petitioner's home should be permitted. If said report is favorable, visitation outside of home shall be allowed, but shall not include overnite visitation with Walter Baritsky.

If the report submitted to the Court by the Juneau County Department of Social Services does recommend off premises visitation, it shall be the burden of Melody Baritsky to prove why such visitation should not be allowed.

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Melody Baritsky may take the minor children as dependants on her income tax returns.

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As a complete and final property division in lieu of maintenance payments to either party, each party shall have free and clear of any liens or claims on part of the other party to this action the following:

Melody Baritsky

Her personal effects and clothing, and she shall also be awarded 120 acres, specifially: NW1/4 NW1/4, SW1/4 NW1/4, W1/2 W1/2 SE1/4, Section 24, Township 18 North, Range 2 East, with right of ingress and egress to each parcel. Walter Baritsky is awarded the remainder of the property including the residence contained thereon. Walter Baritsky further has the right to

remove the brush which may create a fire hazard from a portion of the NW1/4 NW1/4, but may not remove any trees from said property. Walter Baritsky will have the right of entry from said property for the sole purpose of maintaining the drainage ditches currently located thereon. Walter Baritsky may not intentionally do any acts to the land awarded to Melody Baritsky which would decrease its value.

As part of the transfer to Melody Baritsky, Walter Baritsky have the right of first refusal on land awarded to Melody Baritsky if she choose to sell all or portion of it. Said right shall include the opportunity to match the terms and conditions of any offer recieved by Melody Baritsky for the sale of said land. Walter Baritsky's right shall be exercised , in writing, within thirty (30) days of actural written notice of offer to purchase in the possession of Melody Baritsky

Each party shall be responsible for any taxes due upon land awarded to them.

Walter Baritsky.

His personal effects and clothing, and the real estate as stated above.

The parties also agree to give to the other any business records or personal records necessary for the filing of income tax returns.

G. Attorney's fees.

Walter Baritsky shall pay toward the attorney's fees of Melody Baritsky the sum of $200.00. This amount is to be paid directly to Daniel M. Berkos of Thompson Law Office, who may enforce this order in his name.

H. Guardian ad litem's fees.

Walter Baritsky shall pay the guardian ad litem fees of Michael J. McAlpine, and these fees are to be paid directly to said

guardian ad litem.

3. Any disobedience to any order for child support, maintence payments, or family support payments is punishable under sec. 295.02, Stats., by commitment to the county jail until such judgment is complied with and the costs and expences of the proceedings are paid or until the party committed is otherwise discharged, according to law.

4. This divorce is effective immediately except as to sec. 245.03(2) of the Wisconsin Statutes, which prohibits the parties from marrying again until six months after the date of granting of this judgment, and any marriage finalized before that time is void.

5. Pursuant to sec. 247.263, Stats., if either party has a change of employer or change of address, that party must so notify the Clerk of Courts of Juneau County, Wisconsin within 10 days of the change.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 26 day of January, 1981

BY THE COURT

_____,
Hon. James W. Karch
Circuit Court Judge

Approved on 1/5/81
_____,
Philip G. Arneson
Attorney for Respondant

Approved on January 16, 1881
_____,
Jonathan Lindberg
Family Court Commissioner